

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**FAO(MVA) No.273 of 2003 alongwith
C.O. No.513 of 2003**

Judgment reserved on: 3.5.2007

Date of decision: 11. 6. 2007 .

Himachal Road Transport Corportion Appellant.

Vs.

Saroj and others Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?¹ Yes

For the Appellant : Mr.Raman Sethi, Advocate.

**For the Respondents : Mr. Ramesh Sharma, Advocate
for respondents No.1 & 2.**

**Ms. Archna Dutt, Advocate vice
Mr. J.R. Pswal, Advocate, for
respondent No.3.**

Kuldip Singh, Judge.

This appeal has been directed against the award dated 1.4.2003 passed by Motor Accident Claims Tribunal(II), Shimla in M.A.C. No.45-S/2 of 2001, awarding Rs.5,10,000/- compensation along with interest at the rate of 9% per annum from the filing of the petition till the same is deposited. The award is inclusive of amount, if any awarded under Section 140 of the Motor Vehicles Act, 1988.

2. The brief facts are that petitioner No.1 widow and petitioner No.2, mother of deceased Rajinder Singh filed Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (for short

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

...2...

Act) claiming Rs.10,0000/- compensation on account of death of Rajinder Singh , aged 30 years involving Bus No.HP-25-0738 owned by appellant and was being driven at the time of accident by Rachhpal Singh driver. The accident took place near Gumma-Baggi road, Distt Shimla at about 9 AM.on 2.2.2001. An FIR No,22/2001 dated 2.2.2001 was got registered at Police Station Kot-Khai. The deceased Rajinder Singh was truck driver and he was earning Rs.5,000/- by way of salary and Rs.3000/- from agriculture. The accident took place due to rash and negligent driving of the driver of the bus.

3. The owner of the bus filed reply and took preliminary objection of non-joinder of necessary party i.e. Public Works Department of State of H.P. The petition has not been filed in accordance with the prescribed format. On merits, the claim of the claimants has been denied. The claimants were paid Rs.10,000/- at the time of the accident. The accident took place on account of earth cutting of a new road which was lying on the road at the place of accident due to the fault of the Public Works Department.

4. The respondent No.2 driver filed separate reply and has taken preliminary objections that petition is bad for non-joinder of necessary parties i.e. H.P. ,P.W.D. & State of Himachal Pradesh and the petition is not maintainable against him. On merits, it has been submitted that the accident has been taken place due to negligence of H.P., P.W.D. who had thrown new earth cutting on the road. It has been denied that the accident had taken place due to rash and

...3...

negligent driving of respondent No.2. The Tribunal has framed the following issues :-

- 1. Whether the respondent No.1 was driving HRTC bus bearing No.HP-25-0738, on 2.2.2001, at about 9.00 am, near Gumma in rash and negligent manner, resulting the death of deceased Rajinder Singh, as alleged?OPP*
- 2. If issue No.1, is proved, whether the petitioners are entitled for compensation ?OPP*
- 3. Whether the petition is bad for non-joinder of necessary parties, as alleged? OPR-1*
- 4. Whether the petition is not filed in accordance with law, as alleged?*

5. The Tribunal under issue No.1 has held that owner cannot escape the liability under Section 166 of the Act, even if there is no fault of the driver, while deciding issue No.2 the Tribunal has awarded Rs.5,10,000/- compensation. In issue No.3, it has been held that the petition is not bad for non-joinder of necessary parties. The issue No.4 was not pressed and therefore, it has been decided in favour of petitioners. The Tribunal allowed the petition vide impugned award and therefore, the appellant is in appeal in this Court. The claimants have filed Cross-objections for enhancement of the compensation.

6. I have heard learned counsel for the parties and have also gone through the record.

7. The learned counsel for the appellant has submitted that the Tribunal has erred in awarding compensation to the petitioners. The accident has taken place due to the fault of the Public Works Department of Himachal Pradesh who had thrown fresh earth cutting on the road which caused the accident. The driver of the bus was not

...4...

negligent. The Tribunal has awarded excess compensation to the claimants. On the other hand, the learned counsel for the petitioners has submitted that the Tribunal has awarded less compensation to them keeping in view the age and income of the deceased. They have prayed for enhancement of the compensation.

8. PW-1 Smt. Saroj has deposed that her husband has died in an accident involving HRTC bus No.HP-25-0738 on 2.2.2001 at place Bagda. The deceased was 30 years of age. He was truck driver. The salary of the deceased was Rs.8,000/- per month. She proved copy of jamabandi Ex.PW-1/A of the land owned by the deceased. She has stated that the deceased used to grow vegetables on the land and used to earn Rs.35,000/- to -40,000/- per annum. The respondent No.2 was driving the bus at the time of the accident. The accident has taken place due to rash and negligent driving of the driver of the bus.

9. PW-2 Mohinder Singh Head Constable has proved Ex.PW-2/A, FIR No.22/2001 registered at Police Station, Kot-Khai.

10. PW-3 Inder Singh has deposed that deceased Rajinder Singh was employed driver by him on his truck No.HP-09-0482 on Rs.5,000/- per month salary and Rs.100/- daily expenses.

11. PW-4 Suresh Verma has proved licence Ex.PW-4/A which was issued in favour of deceased.

12. PW-5 Jia Lal has stated that he is a commission agent of vegetables at Theog. He knew Rajinder Singh. He used to bring vegetables for sale to him. In the year 1999 he had sold vegetables of Rajinder Singh vide sale receipts Ex.PW-5/A to Ex.PW-5/D. The

...5...

sale receipts of the year 2000 are Ex.PW-5 to Ex.PW-5/J. Rajinder Singh used to sell vegetables every year to the extent of Rs.35,000/- to 40,000/- . In cross examination he has stated that the receipts which he has produced today were prepared one year earlier. The statement of PW-5 was recorded on 13.5.2002. He has further stated that the bills are prepared in triplicate and the original is given to the seller. He has failed to explain how the originals pertaining to the sales of Rajinder Singh came to him.

13. PW-6 Manmohan Singh Chhinda has stated that he was travelling on 2.2.2001 in bus HRTC NO.HP-25-0738 and Rajinder Singh was also travelling in the same bus. This bus met with an accident due to rash and negligent driving of the bus driver.

14. RW-1 Rachhpal Singh has stated that he was driving bus No.HP-25-0738 on 2.2.2001 which met with an accident near Gumma-Baggi. This accident took place due to falling of debris on the road. He was not driving the bus negligently at the time of the accident.

15. It has come on the record that on 2.2.2001 at the time of the accident Rachhpal Singh was driving bus No.HP-25-0738 owned by appellant-HRTC. The owner and driver of the bus have taken the plea that fresh earth cutting, stones were lying on the road where accident took place and the driver was not driving the bus rashly and negligently at the time of the accident. It is not the case of the owner and driver that earth cutting came down on the road at the place of accident all of a sudden and the driver had no time to deal with the situation at that time. The driver was aware that the road conditions

...6...

were not good and therefore, driving of the bus by him on that road itself was a negligent act. PW-6 Manmohan Singh Chhinda has specifically stated that he was also travelling in the ill-fated bus and accident took place due to rash and negligent driving of the bus driver. The Tribunal has rightly returned the findings that even if, it is assumed that the road at the place of accident was slippery due to falling of debris etc. in that case also the owner cannot escape the liability. The owner of the bus is vicariously liable for the act of the driver of the bus.

16. In S. Kaushnuma Begum and others vs. The New India Assurance Co. Ltd. And others AIR 2001 Supreme Court 485, the Hon'ble Supreme Court has held as follows:-

8. “We have to proceed on two premises based on the finding of the Tribunal. The first is that there was no negligence or rashness on the part of the driver of the jeep. Second is that the deceased was knocked down by the jeep when its front tyre burst and consequently the vehicle became disbalanced and turned turtle. Should there necessarily be negligence of the person who drove the vehicle if a claim for compensation (due to the accident involving that vehicle) is to be sustained”.

12. “Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident? This question depends upon how far the Rule in Rylands v. Fletcher { 1861-73 All ER (Reprint) 1} (supra) can apply in motor accident cases. The said Rule is summarized by Blackburn,J.thus:

...7...

“The true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff’s default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient”.

19. “Like any other common law principle, which is acceptable to our jurisprudence, the Rule in Rylands v. Fletcher (1861-73 All ER (Reprint) 1) can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the Rule in claims for compensation made in respect of motor accidents”.

17. In view of **S. Kaushnuma Begum** (supra), the H.R.T.C. owner of the bus is liable to compensate the petitioners on account of death of Rajinder Singh in as much as it is admitted case of the parties that Rajinder Singh died in the accident involving bus No. HP-25-0738 owned by appellant-owner. The Tribunal has rightly decided issue No.1 in favour of the petitioners and the findings on issue No.1 are confirmed.

18. It has been urged on behalf of the appellant that excess compensation has been paid to the claimants. The deceased was 30 years of age at the time of the accident. PW-3 Inder Singh has stated that deceased was employed by him as driver on his truck and he

was being paid Rs.5,000/- per month salary. There is no other worth believing evidence on record regarding the income of deceased Rajinder Singh. In these circumstances, it is reasonable to presume that the deceased was contributing Rs.2500/- per month to his family. In this way the annual contribution of deceased comes to Rs.30,000/-. The petitioners-claimants widow and mother have not given their ages in the petition but in the affidavit of petitioner No.1 Smt. Saroj, her age has been mentioned 26 years on 31.10.2003, keeping in view the age of the deceased at the time of accident the age of petitioner No.2 mother of deceased can be safely taken 50 years. The Tribunal has applied multiplier of 17. The learned counsel for the appellant has stated that keeping in view the age of the deceased the multiplier of 17 is on the higher side. In **NEW INDIA ASSURANCE CO. LTD. Vs KALPANA (SMT) AND OTHERS (2007) 3 Supreme Court Cases 538**, the deceased was 33 years of age and the Hon'ble Supreme Court has applied the multiplier of 13 for awarding compensation. In my opinion in the present case multiplier of 15 is the suitable multiplier for assessing the compensation. Therefore, compensation comes $2500 \times 12 \times 15 = 4,50,000/-$ instead of Rs.5,10,000/- awarded by the Tribunal. The interim relief of Rs.10,000/- which was given to the claimants is not liable to be deducted from the compensation amount in view of judgment of this Court in **Himachal Road Trans. Corpn. And another vs. Durma Devi and others 1997 ACJ 498 (HP)**. The petitioners are also entitled to Rs.20,000/- on account of loss of consortium, funeral expenses etc. Thus, claimants are entitled to compensation of

Rs.4,50,000/-+ Rs.20,000/- = Rs.4,70,000/- on account of death of Rajinder Singh. On this amount the claimants are also entitled to interest at the rate of 9% per annum from the date of filing of the petition till realization of the amount.

19. The petitioners have filed Cross-objections and have submitted that the amount awarded by the Tribunal is less. The deceased was earning Rs.8,000/- by way of salary, allowances and he was earning Rs.30,000/- to Rs.40,000/- from growing vegetables. The Tribunal has wrongly taken dependency Rs.2500/- only. The multiplier of 18 should have been allowed by the Tribunal instead of 17.

20. The appellant has taken objection that the Cross-objections filed by the claimants are time barred. The H.P. Motor Vehicles (4th amendment) Rules, 2004 were published on 15.1.2005 and order 41 Rule 22 Code of Civil Procedure, 1908 was made applicable to the appeals filed against the award of the Claims Tribunal. The submission of learned counsel for the appellant is that Cross-objections were not maintainable prior to 15.1.2005. The Cross-objections in the present appeal were filed on 23.9.2003 and no application for condonation of delay has been filed along with the Cross-objections. The learned counsel for the petitioner has submitted that the Cross-objections are within limitation, but keeping in view the peculiar facts and circumstances of the case delay if any, in filing the Cross-objections may be condoned. He has relied judgment dated 14.7.2005 in FAO No.2 of 1998, HRTC vs. Shiv Ram and another. In that case also the Cross-objections were filed earlier

and were registered and on record when the amended rules came into effect on 15.1.2005. In that case a separate application for condonation of delay in filing the Cross-objections was also filed. This Court in FAO No.2/98 condoned the delay in filing the Cross-objections. However, in the present case there is no application for condonation of delay in filing the Cross-objections. In ***HRTC and others vs. Smt. Breekan Devi and others Latest HLJ 2005 (HP) 980***, it has been held by this High Court in para-12 as follows:-

“On behalf of the Cross-Objections it has been prayed that the Cross-Objections which were filed earlier were filed under the bonafide belief that cross-objections were maintainable since this was the law laid down by a Division Bench of this Court and was being consistently followed. The prayer that the cross-objections be treated to have been filed under the new Rules cannot be accepted unless an appropriate application is moved for treating the cross-objections to have been filed under the new Rules. Even if the old objections are then treated to be filed under the new amended rules they can only be deemed to be filed on 15th January, 2005 and not earlier and, therefore, application for condonation of delay shall also have to be filed. In case any such applications are filed the same shall be dealt with separately”

22 There is no application for condonation of delay in filing the Cross-objections in the present case. The Cross-objections are time barred and therefore, not maintainable. Therefore, the petitioners are not entitled to enhancement of compensation and the Cross-objections are dismissed being time barred.

...11...

No other point was urged.

23 In view of above discussion, the appeal is partly allowed, impugned award is modified, the petitioners namely Smt. Saroj and Smt. Suni Devi are entitled to Rs.4,70,000/- compensation on account of death of deceased Rajinder Singh along with interest at the rate of 9% per annum from the date of filing of the petition till deposit/realization of the compensation amount. The compensation is to be paid by appellant-owner of bus No.HP-25-0738. The compensation amount is to be shared in the ratio of 70% and 30% by petitioners namely Smt. Saroj and Smt. Suni Devi respectively. The compensation amount awarded above will include liability if any, paid determined under Section 140 of the Act. No order as to costs.

June 11, 2007.
(sks)

(Kuldip Singh)
Judge.